

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tarlee Sonie	Team: Squad #9	CCRB Case #: 202202202	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/05/2022 9:52 PM	Location of Incident: Union Square subway station (East 15th Street and Union Square East Entrance)	Precinct: 13	18 Mo. SOL 10/5/2023	EO SOL 10/5/2023	
Date/Time CV Reported Thu, 04/07/2022 10:12 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 04/07/2022 10:12 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Carmelo Colon	07470	967457	TD 4

Officer(s)	Allegation	Investigator Recommendation
A. PO Carmelo Colon	Abuse: Police Officer Carmelo Colon stopped § 87(2)(b)	
B. PO Carmelo Colon	Abuse: Police Officer Carmelo Colon questioned § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On April 7, 2022, § 87(2)(b) filed the following complaint via the CCRB's online website.

On April 5, 2022, at approximately 9:52 PM, § 87(2)(b) entered the Union Square station on East 15th Street and Union Square East in Manhattan. Upon entering, § 87(2)(b) walked toward a set of turnstiles on the mezzanine level and scanned his phone over the One Metro New York (OMNY) system and entered past the turnstiles. § 87(2)(b) then walked a few steps before being stopped by Police Officer Carmelo Colon of Transit District 4 (**Allegation A: Abuse of Authority— Stop,** § 87(2)(g) PO Colon questioned if § 87(2)(b) had “manipulated the turnstiles” (**Allegation B: Abuse of Authority— Question,** § 87(2)(g) § 87(2)(b) explained that he paid his fare and showed PO Colon his previous OMNY charges. § 87(2)(b) took a step away from PO Colon and PO Colon then stepped in front of § 87(2)(b) and blocked him from walking forward (**within Allegation A**). PO Colon informed § 87(2)(b) that he would have to check the transit cameras and walked with § 87(2)(b) to the Transit District 2 stationhouse. After reviewing the transit footage, PO Colon informed § 87(2)(b) that the footage captured him paying his fare and informed him that he was free to leave.

No arrests were made, or summons issued in relation to this incident.

§ 87(2)(g), § 87(4-b)

On May 16, 2022, the investigation received MTA transit video footage of the 15th Street and Union Square East subway station (**Board Review 02, 06**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Carmelo Colon stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Carmelo Colon questioned § 87(2)(b)

It is undisputed that § 87(2)(b) was questioned about whether he evaded paying the subway fare by PO Colon inside Union Square station.

In his interview with the CCRB, § 87(2)(b) stated that after he scanned his phone over the OMNY system and entered past the turnstiles, PO Colon approached him and said, “Did you just manipulate the turnstiles?” (**Board Review 01**) § 87(2)(b) responded, “No, No, I just paid my fare using my phone.” PO Colon then said, “No you manipulated the turnstiles”. § 87(2)(b) stated at that point he believed he was being accused of evading subway fare by PO Colon, and asked “What do you mean manipulated?” PO Colon responded, “You did not pay your fare.” § 87(2)(b) took out his phone and showed PO Colon previous OMNY charges, since the OMNY charge related to the incident had not posted to his account yet. PO Colon kept saying, “Show me, show me.” § 87(2)(b) described PO Colon's demeanor during the incident as “accusatory.”

In his interview with the CCRB, PO Colon explained that he observed § 87(2)(b) near the turnstiles on the mezzanine level, and the turnstiles went back and forward, which led him to believe that § 87(2)(b) had manipulated the turnstiles (**Board Review 03**). PO Colon stated that due to his experience as a transit officer he knew the action to be indicative of someone “manipulating” the turnstiles. Aside from the aforementioned “turnstile manipulation,” nothing else drew his attention to § 87(2)(b) PO

Colon stated that while the size of the turnstiles may have obstructed his view at the time, once he got closer to § 87(2)(b) he had a clear view of the turnstiles. PO Colon acknowledged that while he did not observe § 87(2)(b) pay his fare, at the time of the incident, § 87(2)(b) had his phone in his hand and OMNY fare payments are usually made using one's cellphone. PO Colon stated that he took a step in § 87(2)(b) direction to discuss the incident, and once § 87(2)(b) was unable to provide proof of payment, he instructed § 87(2)(b) to follow him to Transit District 2 to review transit footage. PO Colon stated that he did not prevent § 87(2)(b) from leaving at any point during their interaction and that § 87(2)(b) could have left if he wanted to. PO Colon explained that he only questioned and did not stop § 87(2)(b).

PO Colon's memo book entry for the incident date documents that he, "stopped someone who was possibly manipulating turnstiles and upon investigation through camera the person did in fact pay and was free to go." (**Board Review 04**).

MTA transit footage capturing the Union Square station turnstiles depicts § 87(2)(b) walking toward the turnstile area and scanning his phone over the OMNY system at the 23:09 timestamp (**Board Review 06**). § 87(2)(b) is a white male, wearing a maroon shirt and a black mask. At the 23:10 timestamp, a green light is reflected on § 87(2)(b) hand as he enters through the turnstiles. § 87(2)(b) pauses at the turnstiles at the 23:12 timestamp and speaks with an individual before clearing the turnstiles at the 23:19 timestamp. § 87(2)(b) then continues forward onto the mezzanine level.

MTA transit footage capturing the mezzanine level of the Union Square station depicts PO Colon enter the video frame at the 23:12 timestamp (**Board Review 02**). At that time, he is walking along the mezzanine level on the phone and looking away from the area of the turnstiles, which are to the bottom right of the frame. PO Colon first looks in the direction of the turnstiles as § 87(2)(b) enters the video frame of the mezzanine level camera. § 87(2)(b) is depicted at 23:22 timestamp walking along the mezzanine level and is stopped by PO Colon at the 23:25 timestamp. PO Colon appears to extend his arm out in § 87(2)(b) direction, § 87(2)(b) stops and begins speaking with PO Colon. At the 23:58 timestamp, § 87(2)(b) takes a step away from PO Colon and attempts to walk forward; PO Colon stands in front of § 87(2)(b) and mirrors his step, thereby blocking § 87(2)(b) from walking forward. At the 24:50 timestamp, PO Colon and § 87(2)(b) walk off screen together.

Despite PO Colon stating that § 87(2)(b) was not stopped, the MTA footage obtained by the investigation clearly depicts PO Colon preventing § 87(2)(b) from walking away from him and PO Colon noted in his memo book that he stopped § 87(2)(b). For these reasons, the investigation has determined that PO Colon did in fact stop § 87(2)(b).

People v. Debour, 40 N.Y. 2d 210 (1976) states that "where a police officer entertains a reasonable suspicion that person has committed" a crime, a forcible stop is authorized. (**Board Review 05**). Police officers may not seize an individual without some articulable justification. Innocuous behavior alone will not generate a reasonable suspicion that a crime is at hand.

PO Colon's reason for suspecting § 87(2)(b) of evading the subway fare, the turnstile moving backward then forward, is susceptible to innocuous interpretation. Beyond that, he did not articulate an objective reason for believing § 87(2)(b) evaded the fare. PO Colon independently acknowledged that from where he was positioned, he was unable to see whether § 87(2)(b) paid the subway fare.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (**Board Review 09**).
- PO Carmelo Colon has been a member of service for three years and has been a subject in three other CCRB complaints and eight allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
 - 202006768 involved exonerated allegations of physical force and forcible removal to the hospital.
 - 202203249 involved an allegation of physical force which was closed as victim, unidentified and refusal to provide name and refusal to provide shield number, which was closed as complainant unavailable.

- 202205115 involves allegations of physical force, refusal to provide shield number and sexual misconduct and the case is still open.
- § 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of August 16, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (**Board Review 11**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]

Squad: 9

Investigator:	_____ Tarlee Sonie Signature	_____ Inv. Tarlee Sonie Print Title & Name	_____ 03/21/2023 Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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